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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 JEFFREY E. BRANDLIN, Receiver for
 14 Elevate Investments LLC,

15 Plaintiff,

16 v.

17 SAN CLEMENTE VILLAS BY THE
 18 SEA, LTD., a California limited
 19 partnership,

20 Defendant.

Case No.

Related Case No. 8:20-cv-02398-JVS-
 DFM

**COMPLAINT TO AVOID AND
 RECOVER FRAUDULENT
 TRANSFERS**

21 Plaintiff Jeffrey E. Brandlin, Permanent Receiver (“Receiver”) for Elevate
 22 Investments LLC (“Elevate”) and its subsidiaries and affiliates, avers as follows:

I.

INTRODUCTION

23 1. Elevate is a Wyoming limited liability company which was created and
 24 operated by Justin Robert King (“King”).

25 2. King is the founder and president of Elevate.

26 3. Shannon Leigh King (“S. King”) is the wife of King.

27 4. Since June 2019, King and Elevate offered interests in the Elevate

1 Investment Fund (the “Fund”), raising at least \$7.4 million from investors.

2 Investors were misled in several ways. The purported Fund was fiction, and no such
3 legal entity existed. Instead, investor money was held in brokerage and bank
4 accounts in the name of King, S. King and/or Elevate.

5 5. Elevate and King are defendants in an enforcement action commenced
6 in this Court by the Securities and Exchange Commission (“SEC”) on December 21,
7 2020, entitled *Securities and Exchange Commission v. Justin Robert King; and*
8 *Elevate Investments LLC*, Case No. 8:20-cv-02398-JVS-DFM (“SEC Action”). S.
9 King is a relief defendant in the SEC Action.

10 6. The SEC alleged in its complaint that in offering and selling
11 investments in the Fund, King and Elevate made materially false and misleading
12 statements on Elevate’s publicly-accessible website. In addition, King and Elevate
13 dissipated Fund assets. In just three months from September through November
14 2020, King and Elevate raised \$1.87 million from investors and suffered trading
15 losses of \$532,232.

16 7. On January 19, 2021, the Court hearing the SEC Action granted a
17 Preliminary Injunction and Appointment of a Permanent Receiver. Jeffrey E.
18 Brandlin was appointed as Permanent Receiver for Elevate and its subsidiaries and
19 affiliates, with control over all bank and brokerage accounts which have possession,
20 custody or control of any assets belonging to Elevate and its subsidiaries and
21 affiliates.

22 8. The Court in the SEC Action specifically authorized the Receiver to
23 bring this action.

24 II.

25 JURISDICTION AND VENUE

26 9. This Court has jurisdiction over the SEC Action pursuant to Sections
27 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933, 15 U.S.C. §§ 77t(b),
28 77t(d)(1) and 77v(a), and Sections 21(d)(1), (21)(d)(3)(A), 21(e) and 27(a) of the

1 Securities Exchange Act of 1934, 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) &
 2 78aa(a), and Sections 209(d), 209(e)(1) and 214 of the Investment Advisers Act of
 3 1940, 15 U.S.C. §§ 80b-9(d), 80b-9(e)(1) & 90b-14.

4 10. This Court has jurisdiction over this action pursuant to 28 USC § 1367,
 5 because this action is ancillary to the SEC Action, and the receivership is pending
 6 before this Court. *Donell v. Kowell*, 533 F.3d 762, 769 (9th Cir. 2008).

7 11. This action involves the same series of transactions as the SEC Action.

8 12. Venue is proper in this district because this action is ancillary to the
 9 SEC Action and the receivership currently pending before this Court.

10 III.

11 THE PARTIES

12 13. The Receiver is the duly appointed and acting Permanent Receiver of
 13 Elevate and its subsidiaries and affiliates. The Receiver was appointed by order of
 14 the United States District Court, Central District of California, in the SEC Action.

15 14. Defendant San Clemente Villas By The Sea, Ltd. ("Defendant") is a
 16 limited partnership which, based on information and belief, has its main office in the
 17 State of California.

18 IV.

19 GENERAL ALLEGATIONS

20 A. The SEC Action

21 15. On December 21, 2020, the SEC filed a complaint against Elevate and
 22 King, accompanied by an Ex Parte Application for a Temporary Restraining Order
 23 and Orders: (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the
 24 Destruction of Documents; (4) Granting Expedited Discovery; and (5) Appointing a
 25 Temporary Receiver; and Order to Show Cause Re Preliminary Injunction and
 26 Appointment of a Permanent Receiver.

27 16. The SEC's complaint alleged that the defendants (1) committed fraud
 28 in connection with the purchase and sale of securities in violation of Section 10(b)

1 of the Exchange Act and Rule 10b-5, (2) committed fraud in the offer or sale of
 2 securities in violation of Section 17(a) of the Securities Act, and (3) committed
 3 fraud involving a pooled investment vehicle in violation of Section 206(4) of the
 4 Advisers Act and Rule 206(4)-8.

5 17. On January 19, 2021, in the SEC Action, the Court issued its
 6 Preliminary Injunction, which appointed Jeffrey E. Brandlin as Permanent Receiver
 7 over Elevate and its subsidiaries and affiliates.

8 **B. The Operation of Elevate**

9 18. Since June 2019, King and Elevate had been conducting a \$100 million
 10 securities offering through the Fund. As of November 30, 2020, King and Elevate
 11 had raised at least \$7.4 million from investors.

12 19. Elevate's publicly-accessible website stated that "Elevate Investment
 13 Fund, LLC" was a "Master Fund" domiciled in Wyoming. However, there was no
 14 legal entity with the name "Elevate Investment Fund" formed under the laws of
 15 Wyoming or any other state. Instead, Elevate and King deposited money raised
 16 from investors into brokerage and bank accounts controlled by King that were in the
 17 name of King, Elevate, or S. King.

18 20. In offering and selling investments in the Fund, Elevate and King made
 19 materially false and misleading statements regarding the Fund, Elevate, and King.

20 21. First, Elevate's website stated that Elevate "delivered a 61% percent
 21 return" for all clients under its management from its inception in June 2019 through
 22 June 2020, "compared to -8% for that of its S&P 500 benchmark." The website also
 23 touted a return of over \$600,000 on an investment of \$1 million. During the period
 24 from June 2019 through June 2020, King and Elevate managed five brokerage
 25 accounts in the names of themselves and affiliates and/or clients, however King's
 26 trading resulted in realized losses in every account, with losses totaling over \$3.8
 27 million.

28 22. Second, Elevate's website touted King's trading skills and results.

1 However, although King managed brokerage accounts for himself and others, he
2 had never achieved the returns touted on the Elevate website. King's trading
3 resulted in significant realized losses year after year for all of the accounts he had
4 controlled since 2016.

5 23. Third, Elevate's website touted its affiliation with well-known
6 securities industry participants by stating that its "Trusted Providers" included TD
7 Ameritrade, Charles Schwab, Interactive Brokers, and NinjaTrader. In fact, TD
8 Ameritrade closed Elevate's and King's accounts in July and August 2020.
9 Interactive Brokers received account applications from Elevate and King but had not
10 approved the opening of any accounts. NinjaTrader had no record of any business
11 relationship with King or Elevate.

12 24. In addition to making material misrepresentations to investors, King
13 and Elevate were engaged in a fraudulent scheme. King and Elevate were soliciting
14 investors to invest in the Fund, when no such entity existed, and all investor funds
15 were being deposited into brokerage accounts in King's name and Elevate's name.

16 25. Additionally, King and Elevate were transferring investor funds to
17 accounts controlled by the Kings. Since June 2019, King had transferred from the
18 King and Elevate brokerage accounts \$1.2 million to bank accounts affiliated with
19 the Kings. Under the terms of the offering as disclosed on Elevate's website, neither
20 King nor S. King had any legitimate claim to those funds.

21 26. Elevate engaged in Ponzi-like activity in that substantial funds that
22 were paid by investors were used by Elevate to pay its unrelated business expenses
23 and/or to pay King or S. King's personal expenses.

24 **C. San Clemente Villas By The Sea, Ltd.**

25 27. During the prior four calendar years, Elevate transferred funds to
26 Defendant totaling \$53,626.00.

27 28. The Receiver has demanded the return of these funds from Defendant.
28

FIRST CLAIM FOR RELIEF

**(For Avoidance and Recovery of Fraudulent Transfers Pursuant to California
Civil Code Section 3439.04(a)(1))**

29. The Receiver reavers and incorporates by this reference paragraphs 1 through 28, above, as though set forth herein in full.

30. During the prior four calendar years, Defendant received funds totaling \$53,626.00 from Elevate.

31. The payments by Elevate to Defendant were made with the actual intent to hinder, delay or defraud Elevate's creditors.

32. The payments made to Defendant are avoidable by the Receiver under applicable law, including California Civil Code Section 3439.04(a)(1).

33. The Receiver is entitled to recovery against Defendant in a sum of not less than \$53,626.00, with interest thereon at the legal rate.

SECOND CLAIM FOR RELIEF

**(For Avoidance and Recovery of Fraudulent Transfers Pursuant to California
Civil Code Section 3439.04(a)(2))**

34. The Receiver reavers and incorporates by this reference paragraphs 1 through 28, above, as though set forth herein in full.

35. The transfers made by Elevate to Defendant were made without Elevate receiving a reasonably equivalent value in exchange for the transfers.

36. At the time the transfers were made by Elevate to Defendant, Elevate was engaged or was about to engage in a business or a transaction for which the remaining assets of Elevate were unreasonably small in relation to the business or transaction.

37. At the time the transfers were made by Elevate to Defendant, Elevate intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as such debts became due.

38. The payments made to Defendant are avoidable by the Receiver under

1 applicable law, including California Civil Code Section 3439.04(a)(2).

2 39. The Receiver is entitled to recovery against Defendant in a sum of not
3 less than \$53,626.00, with interest thereon at the legal rate.

4 **THIRD CLAIM FOR RELIEF**

5 **(For Avoidance and Recovery of Fraudulent Transfers Pursuant to California**
6 **Civil Code Section 3439.05)**

7 40. The Receiver reavers and incorporates by this reference paragraphs 1
8 through 28, above, as though set forth herein in full.

9 41. Elevate currently has creditors whose claims arose before the transfers
10 made to Defendant.

11 42. Elevate received less than a reasonably equivalent value in exchange
12 for the transfers made to Defendant.

13 43. At the time of the transfers to Defendant, Elevate was insolvent or
14 became insolvent as a result of the transfers.

15 44. The payments made to Defendant are avoidable by the Receiver under
16 applicable law, including California Civil Code Section 3439.05.

17 45. The Receiver is entitled to recovery against Defendant in a sum of not
18 less than \$53,626.00, with interest thereon at the legal rate.

19 **PRAYER**

20 WHEREFORE, the Receiver prays as follows:

- 21 1. For judgment avoiding Elevate's transfers to Defendant;
- 22 2. For judgment against Defendant in the sum of \$53,626.00;
- 23 3. For interest at the legal rate on the amount of the fraudulent transfers
- 24 from the date of the transfers;

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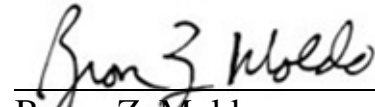
4. For costs of suit; and
5. For such other and further relief as the Court deems appropriate.

DATED: December 22, 2023

ERVIN COHEN & JESSUP LLP

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By:



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Permanent Receiver